

Summary of Johns Manville (JM)'s Marrero Westbank Counter-Offer Terms

- This is a confidential settlement communication pursuant to Rule 408 of the Federal Rules of Civil Procedure, and is not admissible for any purpose. It is also not intended to constitute Initial Notification under the terms of Global Settlement Order (GSO) entered in Manville Corp. v. United States No. 91 Civ. 66832 (RWS)(S.D. N.Y., October 28, 1994).
- JM acknowledges and appreciates the the United States' most recent offer (conveyed in a conference call on August 3, 2009). In that call, the United States offered to "split-the-difference" by applying a generator share of 51% (United States earlier offer was 53% and JM's last offer was 49%). Applying a generator share of 51% would result in a Manville share of \$7,340,586 ($\$27,547,000 \times 51\% \times 95\% \times 55\%$).
- JM does not regard the government's most recent offer as truly "splitting the difference", because the scope of the release offered by the government was considerably narrower than the release repeatedly set forth in offers by JM. JM had sought a release that covered all sites that the government could assert that JM had liability due to asbestos or asbestos-containing materials generated from JM's former Marrero, Louisiana complex. In its most recent offer, the Government proposed that JM be subject to an 26.64% effective share of any future costs the Government incurred in working on sites that had not been addressed by the earlier removal action.
- JM continues to believe that all parties would benefit by avoiding litigation or, more specifically, the GSO's allocation process. In order to try to resolve this matter, JM is prepared to accept, for settlement purposes only, a 50% generator share, and as in DOJ's last offer, a 95% portion of the generator share. With the 55% Manville share provisions in the GSO, JM's share would be calculated as follows: $55\% \times 50\% \times 95\%$, or 26.125%. When applied to the \$27.547M of claimed costs, the calculated result would be \$7.197M. This amount would be subject to the terms of the GSO, including the \$850,000 annual cap.
- The first payment under the GSO would be due within 60 days of the effective date of an agreement memorializing the settlement. Payments in subsequent years would be due according to the GSO, no later than January 30 of each year.
- JM would be released from claims at any properties where US EPA previously investigated or remediated property, including all past costs of the Government.
- In order to be liable for future costs, the United States must provide documentation demonstrating the property had not been previously investigated and admissible evidence that the material had left the former JM Marrero plant as a waste (i.e., was not a product that was later disposed by another or was not waste disposed and transported from another source). JM would have an opportunity to rebut such evidence, but if it could not, JM would pay 26.125% of the costs no later than 60 days from the end of a rebuttal period.

Confidential Settlement Offer Pursuant to Rule 408 FRCP

- Alternatively, JM would offer to accelerate payment, or go “outside of the GSO” in the form of three equal annual payments. This approach is intended to account for the Government’s stated interest that an accelerated approach have the same time value as the GSO approach. This alternate offer was calculated by modeling the GSO offer above, taken out over the life of payments under the GSO. A 3% Superfund interest rate was assumed in the first year (a full 0.75% above the actual Superfund interest rate), then escalated the rates 0.5% per year to 5.5% and held that 5.5% rate through the term of remaining payments. We believe this approach favorable to the Government as the rate estimates are almost certainly high in early years, when the principal to which the rate is applied is highest. We then discounted the payment streams back to present value using a 7% discount rate. This rate was chosen as it is the rate EPA requires in discounting future cash flows in feasibility studies. *See* “A Guide to Developing and Documenting Cost Estimates During the Feasibility Study,” EPA 540-R-00-002 (OSWER 9355.0-75), July 2000 at § 4.3. This present value came out to \$6.69M. To account for the three equal payments, JM would “round up” that figure to \$6.8M. All remaining terms would be the same as the GSO offer, including the 26.125% rate on any appropriate future costs. This offer would not serve as a precedent for any future “waivers” of the GSO.
- Under this alternative scenario, payment of the initial amount would be due within 60 days of the effective date of an agreement memorializing the settlement. Payments in the two subsequent years would be due on the anniversary of the first year’s payment due date.
- Settlement under either approach would be memorialized in a letter agreement containing financial terms, scope of release, and any other necessary terms.
- JM’s monetary offer is based on the settlement terms listed. JM is not willing to settle for this value if any other terms vary materially, in JM’s view.